



November 2, 1999

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health and Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-3101

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 129305.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for incident and investigative reports concerning incidents that occurred on three different days. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.117 of the Government Code.¹ We have considered the exceptions you claim and have reviewed the documents at issue.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 48.101 of the Human Resources Code pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

¹You state that "employees of the Department who are either terminated or demoted or suspended are entitled to file a grievance Once the employee files a grievance, the employee is entitled to a copy of the DPRS investigative report. However, [in this instance], Waco Center for Youth has not taken such disciplinary action." Thus, you state that the requestor is not entitled to a copy of the investigative report.

(1) a report of abuse, neglect, or exploitation made under . .
. chapter [48 of the Human Resources Code];

(2) the identity of the person making the report; and

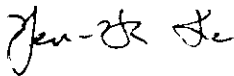
(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

We believe that the information at issue, which you state is a Department of Protective and Regulatory Services APS Facility Abuse and Neglect Investigative Report with attachments, is confidential pursuant to section 48.101(a) of the Human Resources Code. *See* 40 T.A.C. § 710.12 (reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse and neglect are confidential). Consequently, the information must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

Because section 48.101 of the Human Resource Code is dispositive, we do not address your other arguments. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/ljp

Ref: ID# 129305

Encl. Submitted documents

cc: Mr. Rick Mazza
2804 Trice
Waco, Texas 76707
(w/o enclosures)